

Subject: Brief on Amendment to Part 58 and Conforming Amendments to Parts 50, 574, 582, 583, and 970 regarding: “Environmental Review Procedures for Entities Assuming HUD’s Environmental Responsibilities (FR-4523)

The rule amendments are grouped generally into the three categories: (1) rule changes that safeguard against potential environmental effects; (2) rule updates based on the need for clarification or documentation improvements; and (3) rule updates based on program termination or authorization.

Rule changes that safeguard against potential environmental effects.

§58.1(d) for good cause and with appropriate conditions allows the Assistant Secretary for CPD to approve waivers and exceptions or establish criteria for exceptions from the requirements of this part. The same standard is the current environmental waiver policy under 24 CFR 50.10(b).

§58.5(i) replaces a reference to an obsolete HUD Notice 79-33 on toxic chemicals and radioactive materials with updated requirements regarding contamination including a policy that project sites be free of contamination that could affect the health and safety of occupants or conflict with the intended utilization of the property. The new requirement is similar to that identified in 24 CFR 50.3(i).

§58.22(e) is added to reflect a new statutory amendment that permits an organization, consortium or affiliate under the Self-Help Homeownership Opportunity Program (SHOP) to advance non-grant funds to acquire land prior to the completion of the environmental review process. This is generally considered a choice limiting action that otherwise is prohibited under §58.22. However, §58.22(e) makes clear that advancing non-grant funds for property acquisition is done at the risk of the purchaser regarding the outcome of the environmental review. In addition, under §58.22(a), HUD grant funds may not be committed or expended for land acquisition prior to completion of the environmental review and HUD’s approval of the request for release of funds (RROF). Finally, Part 58 continues to prohibit project-related physical actions on any land so acquired with non-grant funds, such as construction, prior to completion of the environmental review and approval of the RROF.

Rule updates based on the need for clarification or documentation improvements.

§58.22(a) through (c) is revised to make clear the following: (i) limitations on activities apply not only to recipients, but also to other project participants, such as public or private non-profit or for-profit entities and their contractors; (ii) undertaking an activity that would have adverse environmental impact or limit the choice of alternatives, as well as committing non-HUD funds, to such an activity is prohibited before the request for release of funds and environmental certification have been approved; and (iii) in accord with NEPA regulations of the Council on Environmental Quality (40 CFR 1506.1(b)), if a recipient is considering an application from a prospective sub-recipient or beneficiary and is aware that the applicant is about to take an action within the recipient’s jurisdiction that is prohibited by §58.22(a), the recipient shall promptly notify the applicant that the recipient will take appropriate action to ensure that the objectives

and procedures of NEPA are achieved. Conforming changes to §§58.72 and 58.75 cover other partners in the development process.

§58.33(b) allows the same treatment for a locally-declared emergency as is currently permitted for a Presidentially-declared disaster with respect to combining the pre-submission comment periods for the Notice of Finding of No Significant Impact and the Notice of Intent to Request Release of Funds with the post-submission period for objections to the RROF.

§58.1(c) clarifies that activities assisted with repayments to a revolving loan fund initially assisted with HUD funds are subject to environmental requirements if HUD program rules continue to treat the activities as subject to the Federal requirements.

§58.2 clarifies that Indian tribes are the “recipient” and “responsible entity” with respect to assistance under the Native American Housing Assistance and Self-Determination Act (NAHASDA) and Section 184 Indian housing loan guarantees, and clarifies that Regional Corporations in Alaska are considered Indian tribes.

§58.4(c) allows, as already provided under current procedure for the NAHASDA and Section 184 programs, for Indian tribes to choose whether or not to assume environmental responsibilities under Part 58 under those programs.

§58.11(b) pertains to legal capacity and performance and adds “HOPWA” recipient to and exclude “Indian housing” recipient from this paragraph which allows recipients that are not responsible entities to object to the performance of the environmental review by a responsible entity on the basis of performance, timing, or compatibility of objectives. In such case, HUD will review the facts to determine who will perform the environmental review.

§58.35(a) clarifies NEPA exclusions for: (i) rehabilitation by adding an exclusion at (a)(3) in the case of a building for residential use (with one to four units) when the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland; (ii) individual actions at (a)(4) by limiting this exclusion to no more than four dwelling units on any one site whether in one or multiple buildings; and (iii) property acquisition for unchanged use at (a)(5) by including leasing and also covering equity loans. Conforming amendments are made to 24 CFR 50.20(a)(2)-(a)(4).

§58.35(b)(7) adds a NEPA exclusion and procedure for approval of supplemental assistance to a project previously environmentally approved.

§58.45 clarifies that the periods provided for certain public comment periods are minimum required periods.

§50.19(b)(15) revises to conform to the existing comparable exclusion in §58.35(b)(5) for homebuyer assistance activities by revising the Part 50 exclusion to cover dwelling units under construction as well as existing dwelling units.

Rule updates based on program termination or legislative authorization.

§§ 58.1(b)(2), 58.4(b)(3) and 58.17 are deleted and §§ 58.4(b)(2) and 58.5(a) are revised to remove references to the Rental Rehabilitation program and Housing Development Grant program that have been terminated. Sections 58.1(b)(6) and 58.2(a)(7) are revised to delete references to Indian housing authorities (IHAs) under the U.S. Housing Act of 1937, which no longer provides for assistance to IHAs.

§§ 58.1(b) adds in response to legislative authorization Part 58 coverage of the following: nonprofit organizations and housing agencies under the Supportive Housing program and Shelter Plus Care program at (3)(ii); Public Housing Programs including the HOPE VI program at (6)(i); Indian Housing Block Grant program at (10); Indian Housing Loan Guarantees program at (11); and Housing Opportunities for Persons with AIDS (HOPWA) at (12). Section 58.2(a)(6) is revised to add a definition of “release of funds” for the newly-added Section 184 Indian loan guarantee program.

24 CFR 574.510, 582.230, 583.230, and 970.4(b) are revised to cross-reference this part to reflect the applicability of Part 58 procedures. They are revised to reflect the applicability of Part 50 procedures in those cases when HUD determines under §58.11 that HUD itself will be responsible to perform environmental responsibilities for complying with the National Environmental Policy Act (NEPA), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and other environmental requirements (as specified in 24 CFR 50.4).

The preamble lists the 26 HUD programs subject to Part 58. Of the 26 HUD programs, all are grant programs except the one mortgage insurance program for multifamily housing. Of the 26 HUD programs, 15 are CPD programs, 9 are PIH programs, 1 is an H program, and 1 is an OHHLHC program. All other programs not listed are subject to Part 50.

The effective date of the final rule is 30 days from date of publication in the Federal Register.

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